

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2058 OF 1996  
IN  
SUIT NO.1919 OF 1996

Jhaverchand Hirachand & Ors. ....Plaintiffs  
V/s.  
Bimal Viren Vora ....Defendants

Mr.Simil Purohit with Mr.Tapan Deshpande i/b  
M/s.Amarchand & Mangaldas & Suresh A. Shroff & Co.  
for the Plaintiffs.  
Mr.D.S. Parikh, Senior Counsel with Ms.Nadia Bhatia  
i/b Mr.P.S. Gidwani for the Defendants.

**CORAM : S.J. VAZIFDAR, J.**  
**DATED : 12TH SEPTEMBER, 2006.**

**P.C.** :

1. The suit is filed for a declaration that the Defendants are not entitled to advertise on the hoarding site placed on the terrace of a building "Fulchand Niwas" owned by Seth Fulchand Kasturchand Trust of which the Plaintiffs are the trustees.

2. An agreement dated 8.11.1990 was entered into between the Plaintiffs and the Defendants. Clauses 11 and 14 read as under :-

"11. The Agree will be for a period of five years commencing from the date of 1st August, 1991 with an option to the Advertisers to continue for another period of five years by giving to the Trustees, a written notice of six months in that behalf prior to the expiry

of the said term of five years. the Advertisers shall at least six months before the expiry of the said period of five years inform the Trustees whether they desire to continue or terminate these presents. However the terms and conditions for the following five years will be as mutually agreed upon by the parties at that time save except the clause for renewal.

14. It is specifically agreed by and between the parties that the Advertisers have merely the right to use the said site and install neon sign thereon. The licence to use the said site and this Agreement is not intended to and does not create any other rights, title or interest in favour of the Advertisers either that of a tenant, sub-tenant, joint or co-tenant or lessee or sub-tenant jointwise. The Advertisers shall not charge, hypothecate, mortgage or otherwise deal with the site or in any way transfer the benefit of this Agreement to any other person or persons."

. The agreement came to an end by efflux of time on 7.11.1995.

3. By a letter dated 8.9.1995, the Defendants expressed their desire of continuing the agreement for a period of five years from 1.4.1996. It is alleged in the said letter that the Plaintiffs had agreed to the agreement being renewed on the same terms and conditions except as to the consideration. This oral agreement is denied by the Plaintiffs. It is not necessary to consider this issue in view of the fact that even assuming that what the Defendants have stated in the letter is correct, the agreement in any

event came to an end on 31.3.2001.

4. The Defendants filed R.A.D. Suit No.296 of 1996 in the Court of Small Causes at Bombay. In any event, the question of jurisdiction and maintainability of this suit must depend upon the averments contained in the suit. Prima-facie, the Defendants upon expiry of the agreement were tres-passers in respect of the said hoarding site. They ought to have removed themselves. They have been using the said site despite the Plaintiffs request not to do so.

5. By an ad-interim order dated 25.7.1996, the Defendants were ordered and directed to pay a sum of Rs.50,000/- per month. The Notice of Motion was finally disposed of by the learned Judge directing the Defendants to pay a sum of Rs.1,25,000/- per month from November, 1997 till the suit was disposed of. That order however, was set aside on an application made by the Defendants and the Notice of Motion was restored to file.

6. For the reasons stated above and for the reasons mentioned in the order dated 17.11.1997, with which I am in respectful agreement. I am of the opinion that the Defendants ought not to be permitted

to continue in possession of the hoarding site without being put on terms.

7. It is true that in prayer (c) the Plaintiffs have sought a sum of Rs.1,25,000/- per month. That however was in 1996. Thereafter the rates have admittedly risen. This is a fit case to consider the relief of ascertaining the correct and fair amount by relying upon prayer (g) of the Notice of Motion which seeks such further and other reliefs as the nature and circumstances of the case require.

8. Mr.Parikh, the learned Senior Counsel appearing on behalf of the Defendants stated that the Defendants have invested an amount of about Rs.5.00 to Rs.6.00 lacs for construction of the hoarding site. This is disputed by Mr.Purohit, the learned counsel appearing on behalf of the Plaintiffs. However, even assuming that Rs.5.00 to Rs.6.00 lacs have been invested, the Defendants would be entitled to reduction of the royalty to the extent of Rs.5000/- per month being the reasonable return on an investment of Rs.6.00 lacs.

9. In the circumstances, the Court Receiver, High Court, Bombay is appointed as the Receiver of the hoarding site. The Court Receiver shall after calling

for bids, fix the royalty and security in respect of the hoarding site. In the first instance, the Court Receiver shall permit the Defendant to be his agent subject to his bidding the highest amount. In the event of the Defendant being appointed as the agent of the Court Receiver, he shall be entitled to pay the amount fixed by the Court Receiver less Rs.5000/- per month.

10. The operation of this order is stayed for a period of two weeks from today to enable the Defendants to challenge this order.

11. The Notice of Motion is accordingly disposed of.